

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

DATE: MAY 02 2011 OFFICE: NEBRASKA SERVICE CENTER FILE: LIN 08 121 50696

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, an energy company, seeks to employ the beneficiary as a reservoir engineer/petrophysicist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and supporting documents.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer --

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on March 14, 2008. In an introductory letter, the petitioner’s in-house attorney [REDACTED] described the beneficiary’s roles in the petitioner’s efforts:

[The petitioner] is one of the largest producers of oil and gas in the United States. . . . The [petitioner’s] largest Alaskan . . . project, Prudhoe Bay is a major potential energy resource for the country.

Projections estimate that Prudhoe Bay contains more than 25 billion barrels of oil, 13 billion of which may be recovered with currently existing technologies. . . .

However, original recovery efforts began in Prudhoe Bay in 1977 and in recent years, as the field has matured and oil has been extracted, production in the region has declined. As a result, [the petitioner] is relying on developing new and innovative methods for maximizing production in the region through production optimization technologies . . . to recover previously unexplored natural resources in an economically viable manner. . . .

In her role as a Reservoir Engineer and Petrophysicist, [the beneficiary's] work is instrumental in determining with precision where oil and gas reserves are located and how to best recover such reserves. . . .

[The beneficiary] is directly contributing to the U.S. economy through her innovative and groundbreaking work at Prudhoe Bay, which will increase available oil and gas reserves in the United States, while reducing the associated recovery costs. As such, [the beneficiary's] exceptional contributions to the field of production optimization include:

- **Development of a Novel Cost-Benefit Analysis Method Used [in] Determining the Cost of Petrophysical Data Recovery:** . . . The model . . . has found applications in related field activities, such [as] . . . oil refining operations. . . . The model has been applied in maintaining lengthy and stable field operations.
- **Discovery and Implementation of a Novel Reservoir Characterization Model to Accurately Model Rock Architecture:** . . . The model allows reservoir engineers to develop a better understanding of where oil and gas deposits are found in complex geological terrain and also the best path for extracting such reserves from the well.
- **Creation of a Systematic Tight Gas Carbonate Evaluation Model:** Tight gas reservoirs refer to reservoirs where the rock is not highly permeable and liquid extraction is particularly difficult. . . . [The beneficiary] developed a mode[l] that more accurately depicts the geological terrain in such reservoirs, facilitating the recovery of oil and gas deposits in an economically feasible way.
- **Utilization of Fluid Substitution Innovation in Accurately Modeling Rock Architecture:** In developing a better recoverable seismic image from low porosity environments, [the beneficiary] has implemented fluid substitution models, and improved such models, in mapping undeveloped

and mature oil fields in an attempt to recover accurate geological data and plan for optimal recovery from such regions.

- **Integration of Existing Log Formation Models in Generating a Highly Accurate Novel Method for Reservoir Evaluation:** . . . [The beneficiary] was able to improve the reservoir engineer's ability to evaluate recoverable reserves in low-resistivity formations or thin-bed formations, which historically had presented global challenges in identifying and recovering oil and gas reserves.

Thus, [the beneficiary's] technological innovations and their practical field applications are paving the way for companies such as [the petitioner] to develop natural resources more efficiently in areas of vital import to the nation such as the complex tundra of Prudhoe Bay, Alaska. Unlocking such resources is key to meeting U.S. energy demands, as Prudhoe Bay has unmatched energy potential within this country.

(Footnotes omitted.) The substantial intrinsic merit and national scope of the beneficiary's occupation are not in dispute in this proceeding. At issue is the extent of the petitioner's individual contributions to her field. [REDACTED] claimed: "the oil and natural gas industry recognizes the significance of [the beneficiary's] innovative work rather than simply the importance of her field," and that the beneficiary "has influenced the oil and natural gas field as a whole. . . . [T]here are but a handful of qualified individuals in the world who can match her performance." To support these claims, the petitioner submitted various exhibits. Some of these exhibits simply demonstrate the beneficiary's professional credentials, which the AAO does not question, but which do not self-evidently establish her impact or influence on her field.

[REDACTED] stated that exhibit 18 documents "various awards and honors given to [the beneficiary] in her professional capacity as an engineer." Exhibit 18 consists of six Chinese-language documents with no certified English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). The AAO cannot determine whether the petitioner accurately described these documents. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)).

The petitioner submitted copies of two papers. Neither paper showed any internal evidence of publication. For instance, neither paper identified any journal or publication at the top or bottom page margins, and the page numbers of both documents start at "1," rather than at higher numbers that would indicate their extraction from a longer work. The petitioner identified one paper, "Modeling Reservoir Architecture Using a Simple Pattern Index Number Based on Moment of Inertia," as the beneficiary's master's thesis. The petitioner referred to the paper as a "publication" but did not provide any details about who published it, or when.

The petitioner claimed that the second paper, "Cost/Benefit Analysis of Petrophysical Data Acquisition," "was selected for oral presentation in the 43rd Annual SPWLA conference." (SPWLA stands for Society of Petrophysicists and Well Log Analysts.) [REDACTED] identified exhibit 20 as "a program for [the beneficiary's] upcoming speaking engagement at a professional lecture series." Exhibit 20 is a partial schedule for the SPWLA 2008 symposium, which lists the beneficiary's name beside the title "Cost/Benefit Analysis of Petrophysical Data Acquisition."

The symposium schedule says nothing about a "speaking engagement" or "oral presentation" by the beneficiary. The document lists a number of presentations, by other researchers, at 20-minute intervals, showing the time of each presentation followed by the word "Oral," but the beneficiary's presentation is not one of these. Rather, the beneficiary's presentation is one of several marked "Poster" rather than "Oral," with no corresponding time. Therefore, the evidence indicates that beneficiary's presentation was a poster presentation, despite the petitioner's repeated references to an "oral presentation" and "speaking engagement." The petitioner did not explain why a research paper from 2001 apparently took seven years to reach the academic community before appearing at a 2008 conference.

The petitioner also submitted abstracts of other theses and papers that the beneficiary co-wrote during the 1990s. The petitioner identified two articles said to contain references to the beneficiary's work, but the petitioner did not substantiate that claim by submitting copies of those articles. The petitioner's mislabeling of the beneficiary's poster presentation demonstrates that the petitioner's claims and descriptions are not necessarily accurate. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner submitted several witness letters. [REDACTED] of the University of Alaska provided the shortest letter, stating that the beneficiary's academic and professional background "makes [the beneficiary] specialized. Her skills in well-log interpretation, seismic rock properties knowledge, and application of specialized reservoir software experience make [the beneficiary] an outstanding researcher for reservoir engineering and development."

[REDACTED] "the Europe, Africa, Russia, and Caspian (EARC) Region Petrophysical Advisor for [REDACTED]," stated:

I have not personally met [the beneficiary] since December 2003 when she left Aberdeen [Scotland], but I am well aware of her groundbreaking contributions to the field of petrophysics and reservoir engineering. . . .

[The beneficiary's] work at the [REDACTED] is of particular interest and significance in the industry, as during her time at the university, [the beneficiary] developed multi-disciplinary approaches to oil and gas resource development and recovery that have shaped the industry in many positive ways. For example, [the beneficiary] led a research project at the school that focused on the cost/benefit analysis of petrophysical data acquisition. . . . The resulting model accounted for variables that previously were very difficult to work with in providing better data regarding the formation net pay in any complex geographic region. Formation net pay . . . refers to the maximum rock thickness that may be encountered while still maintaining a profitable hydrocarbon recovery mission. Thus, improving the reliability of such data has proven critical in the success of various oil and gas recovery efforts, including those currently being undertaken by [the petitioner]. . . .

[The beneficiary] has developed a method of reservoir characterization using the concept of moment of inertia based on Newton's law of physics to most accurately characterize the spaces found in various reservoirs and the connectivity properties within the reservoirs. . . . Through [the beneficiary's] model . . . improved images of available reserves in the complex regions were generated and used to recover oil in such challenging environments as the Ivishak and Kurparuk Reservoirs in Prudhoe Bay.

Another significant contribution . . . [was] her development of a model for accurately imaging reservoirs where tight gas carbonate deposits may be located . . . such that additional reserves that were previously thought to be beyond reach may be recovered. The concept has already been applied with success in Prudhoe Bay's Lisburn Formation. . . .

Maintaining a competitive edge in the oil and gas industry is critical to [the petitioner], and as such, the direct economic benefits of [the beneficiary's] continued contributions to [the petitioner] are essential in maintaining their competitive edge.

The AAO notes that it is not a matter of national interest for the petitioner to maintain a "competitive edge" over competing United States companies. (The AAO further notes that the petitioner is a subsidiary of a parent company based in the United Kingdom.)

[REDACTED] a petrophysical consultant for the petitioner in Prudhoe Bay, claimed that the beneficiary's "work is truly exceptional and places her among the top petrophysicists in the world," but, like other witnesses, did not identify any site using the beneficiary's methods apart from "several reservoirs in Prudhoe Bay."

[REDACTED] president of the SPWLA and a senior petrophysicist with the petitioning entity, stated:

I am well aware of [the beneficiary's] contributions to our scientific community based on my active role within SPWLA and I have been very impressed by her research as she has demonstrated the distinct ability to innovate the field. For instance, [the beneficiary] developed a clearly defined process for performing a cost benefit analysis of the data acquired in petrophysical exploration. . . . It is unique in assessing the value of crucial technical data in economic terms and therefore promotes transparent and effective decision making.

. . . [The beneficiary's] contributions to petrophysical analysis are invaluable to recovery efforts at Prudhoe Bay, to [the petitioner], and to the United States as a whole, as her work allows for more accurate estimation of recoverable reserves by eliminating uncertainties commonly encountered with traditional petrophysical data acquisition methods. . . .

In addition, [the beneficiary] has continued her pioneering and innovative research in the field, in developing unique and novel methods for reservoir characterization. Through use of a well-known inertia-based concept grounded in Newton's law, [the beneficiary] developed a model to accurately characterize spatial connectivity in the rock architecture within the oil reservoir in order to determine what diverse characteristics are present in the reservoir, the permeability properties of the rock, and liquid flow patterns of any petrochemical deposits.

██████████ did not identify any sites other than Prudhoe Bay where the beneficiary's models are in use, or any companies other than the petitioner that use the model at all. Rather, he stated that the beneficiary's "work has presented an appreciable benefit of great value to the active exploration efforts currently occurring at Prudhoe Bay's Ivishak and Kuparuk reservoirs" and "will likely be applied in developing the Sag River reservoir," also at Prudhoe Bay.

Two of the initial witnesses are government employees. ██████████ petroleum land manager for the ██████████ stated:

My assessment and evaluation of [the beneficiary's] work and achievements are based on technical knowledge of her accomplishments alone. I have been duly impressed with her publication record, her educational credentials, her employment history, and her distinctive innovations throughout the field of petrophysics. Accordingly, it is my professional opinion that [the beneficiary's] accomplishments in the oil and gas industry, and specifically her discoveries that have been applied at Prudhoe Bay, are outstanding and worthy of a national interest waiver.

Specifically, [the beneficiary's] work with tight gas carbonate reservoir characterization has led to significant improvements in the identification and development of important national gas reserves, particularly in the Prudhoe Bay Field. . . . The [beneficiary's] model . . . provides highly accurate data on how much

gas is contained in various rock formations and where the gas is found in the reservoir. . . .

[The beneficiary] has also revolutionized the oil and gas recovery efforts in areas like Prudhoe Bay where complex geology presents special challenges through her special methodology of analyzing rock properties. Specifically, during her doctoral studies, [the beneficiary] employed a method called fluid substitution which . . . proves to be very useful in identifying available oil and gas reserves in particularly challenging geographical environments. . . . As a result of her use of this method, fluid substitution has become a common practice in rock property studies, playing a crucial role in obtaining better seismic images for reservoir management. The use of fluid substitution represents a major breakthrough. . . .

As evidenced by these developments, [the beneficiary] has repeatedly demonstrated her unique and significant value in oil and gas recovery efforts, playing a critical role as an innovator in the industry.

[REDACTED] stated:

[The beneficiary] is contributing to optimized oil and gas recovery efforts in one of the United States' most significant and productive oil fields. . . .

My evaluation of [the beneficiary] is based on my own expertise in the field of petroleum engineering and conversations I've had with both [the beneficiary] and colleagues in the oil and gas industry. I can say with confidence that [the beneficiary's] work has had considerable impact on the areas of reserve identification and production optimization in the field of oil and gas recovery. . . .

One of [the beneficiary's] significant pioneering breakthroughs occurred in her use of electro-chemical analysis of low-resistivity and thin-bedded formation reservoir regions. . . . In innovating existing models designed to account for such variables, [the beneficiary] developed a new shaly sand model that employed electro-chemical properties and principals [sic] in most accurately creating an image of the terrain where low-resistivity or thin-bed formations exist. [The beneficiary's] model has been employed in Prudhoe Bay in increasing the lives of what were previously thought to be mature oil fields. . . .

Additionally, [the beneficiary] has contributed significantly to production optimization in Prudhoe Bay through her innovative approaches to reservoir characterization. . . . [The beneficiary] is improving the production of reservoirs that were thought to have generated all recoverable oil and gas reserves.

██████████ claimed that the beneficiary's "work is being used effectively in the oilfields of Prudhoe Bay, Alaska and also throughout the industry," but every specific example he offered related to Prudhoe Bay. ██████████ then echoed ██████████ letter, by stating that the petitioner "is a leader in the energy industry. However, in order to maintain its position in the market, it is critical that [the petitioner] optimizes the efficiency of its operations." It is far from clear why the Bureau of Land Management would take a direct interest in one oil company's ability "to maintain its position in the market."

On May 21, 2009, the director requested additional evidence, including documentation of citation of the beneficiary's published work and "documentary evidence to establish that the beneficiary has a past record of specific prior achievement that justifies projections of future benefit to the national interest." The director stated that the petitioner "must demonstrate, to some degree, the beneficiary's influence on the field of employment as a whole."

In response, the petitioner did not submit any citation evidence at all. Instead, ██████████ stated: "citations of the Beneficiary's published papers are not the only type of documentary evidence that can demonstrate the influence that a Beneficiary wields in the field of endeavour. Publications and citations of the published papers are sometimes not applicable or available if the Beneficiary's profession does not require publication." These statements are certainly true, as far as they go. Nevertheless, in this particular instance, the petitioner had previously submitted what ██████████ called "selected publications written by" the beneficiary, the petitioner had identified specific articles that, the petitioner claimed, cited her work. Because the petitioner had already claimed that the beneficiary is a published and cited author, it is irrelevant that some beneficiaries are not published and cited authors. The issue is not the absence of citations as such. Rather, the petitioner made specific claims about citation of the beneficiary's work, but failed or refused to provide that evidence upon request. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The petitioner submitted copies of several conference presentations by the beneficiary. One of them is the beneficiary's 2001 paper, "Cost/Benefit Analysis of Petrophysical Data Acquisition," modified for presentation at the 2008 SPWLA conference mentioned earlier. Most of the other presentations date from 2001 and earlier; some are in Chinese. The petitioner also submitted materials showing that the beneficiary participated in a presentation entitled "The Historical Development of Prudhoe Bay Petrophysical Models." It appears that this presentation was in preparation at the time the petitioner filed the petition in March 2008, and the presentation appeared at a 2009 conference. The title and abstract of the article describe a historical overview, rather than a presentation of new data, findings, or methods.

The director, in the request for evidence, did not request further witness letters or state that more letters would strengthen the petition. Nevertheless, the petitioner's response contained four new letters. ██████████ president of ██████████, and vice president of ██████████, stated:

[The beneficiary] has made seminal contributions to the oil and gas industry through the development of innovative approaches to oil and gas resource development and recovery that have shaped the industry's new focus on the economic assessments of petrophysical data acquisition in oil recovery efforts. She did this through her paper entitled "Cost/Benefit Analysis of Petrophysical Data Acquisition." . . .

By demonstrating a systematic process that can be used to perform a cost/benefit analysis of the value of petrophysical data acquisition, [the beneficiary] fundamentally re-shaped how the industry assessed petrophysical data acquisition. . . .

[The beneficiary] made a substantial impact in the oil industry . . . when she demonstrated how cost/benefit analysis of petrophysical data acquisition can rejuvenate the industry's oil and gas recovery efforts by optimizing reservoir development and management.

The record is devoid of documentary evidence of the paper's "substantial impact." If the beneficiary's work led directly to an increase in the number or quality of cost/benefit analyses, then documentation of those analyses presumably exists, but the petitioner did not provide any such evidence.

former president of , stated:

One of the most important contributions that [the beneficiary] has made to the oil and gas industry is her work in developing and applying novel approaches to oil and gas resource development and recovery by shifting the oil industry's focus to cost/benefits analysis of petrophysical data acquisition in order to improve oil recovery efforts. [The beneficiary's] contributions on this topic are represented in her paper entitled, "Cost/Benefit Analysis of Petrophysical Data Acquisition," which was selected for publication . . . in December 2007 for presentation in [SPWLA's] annual conference in May 2008.

The paper is an excellent development of the methodology I have recommended in my textbook, Log Data Acquisition and Quality Control, first published in 1991. . . . While the approach developed in my book was mostly theoretical, [the beneficiary] has applied it with rigor to specific case studies and expanded it to increase its applicability to the economics of oil & gas fields.

. . . Her findings demonstrated a new and systematic approach to performing cost/benefit analysis of acquiring petrophysical data. . . .

[The beneficiary's] work on the cost/benefit analysis of petrophysical data acquisition significantly influenced the oil industry by offering a concrete and systematic approach that enables oil companies to assess how much to cost cut the petrophysical

data acquisition programs without compromising the integrity of reservoir development efforts.

The petitioner submitted no documentary evidence to establish the nature or extent of the beneficiary's claimed influence on the industry. [REDACTED] letter suggests that the beneficiary's major achievement is essentially an adaptation of [REDACTED] own earlier work from 1991. Also, the record amply shows that the paper discussed in the above letters dates from 2001, when the beneficiary was working at a university in Scotland. There is no evidence that the beneficiary's recent work for the petitioner is similar in style or substance to her academic work from nearly seven years before the 2008 filing date.

The question also arises as to why the beneficiary's 2001 paper apparently sat unpublished and unrepresented for about seven years before its appearance at the 2008 conference. The record does not show what attempts, if any, the beneficiary or her co-author made to disseminate the work before 2008, nor does it explain the delay in its eventual appearance. Certainly the record does not show that the paper has all along earned recognition as the seminal work that the petitioner now claims it to be.

In terms of whatever influence the paper may have had following its May 2008 presentation, the petitioner must establish that the beneficiary is eligible for the requested benefit at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). When the petitioner filed the petition in March 2008, the presentation had not happened yet; there was only the expectation that the beneficiary's seven-year-old paper would finally rise to prominence at the upcoming SPWLA conference.

The last two letters are from officials of the petitioning company. [REDACTED] a senior geologist for the petitioner at Greater Prudhoe Bay, claims that the beneficiary "has been instrumental in [the petitioner's] efforts to update and improve the Prudhoe Fullfield Model." He stated:

[The beneficiary] has made substantial contributions to the oil and gas industry in Alaska and at Prudhoe Bay in particular. In leading petrophysical studies to support sustained oil and gas production and prolong Prudhoe field life, [the beneficiary's] contributions have had greater impact than those of other reservoir engineers in [the petitioning company] and in the industry as a whole.

The principal example of the beneficiary's influence that [REDACTED] cited was the beneficiary's new paper, "Historical Development of Prudhoe Bay Petrophysical Models." The petitioner did not mention this paper in the initial filing, and the petitioner's subsequent submissions indicate that the beneficiary completed the paper after the filing date. The same objection made above applies here as well – this accomplishment happened after the filing date, and therefore too late to establish the beneficiary's eligibility as of the filing date. Even then, this claimed achievement is subject to the same general objection that holds throughout this proceeding, specifically that the beneficiary is

supposedly a highly influential figure in her field, but this claimed influence has left no trace other than witness letters written specifically to support the petition.

In a lengthy, illustrated letter, [REDACTED] team leader of [REDACTED] [REDACTED] stated:

[The beneficiary] plays a critical role in our GPB Fieldwide Team as a Reservoir Engineer with unique expertise in petrophysics to evaluate the Enhanced Oil Recovery (EOR) process known as Miscible Injection that is used in the Greater Prudhoe Bay area. . . .

[The beneficiary's] unique educational and work experience in both petrophysics and reservoir engineering render her exceptionally qualified to work on major reservoir formation evaluation projects for [the petitioner's] Prudhoe Bay field in Alaska. She has made significant contributions to [the petitioner's] efforts by applying new petrophysical models and analytical methodologies to help us determine the most prudent approach to increasing the recovery and subsequent production level of this area of the field. Since joining [the petitioner] in Alaska, [the beneficiary] has developed a new petrophysics interpretation model to solve the engineering challenges of monitoring water encroachment and in reducing the water and gas saturation uncertainties during water injection to extract hydrocarbons from maturing fields in Prudhoe Bay. . . . [S]he has substantially influenced the way the industry manages development and production at large reservoirs with aging production capacity.

[REDACTED] then discussed the beneficiary's work in technical detail, "to give context to . . . how [the beneficiary] has significantly influenced the industry's efforts in this field," but the discussion fails to show adoption of the beneficiary's methods outside some of the petitioner's Prudhoe Bay facilities.

[REDACTED] described the expected outcome of the beneficiary's work:

As a direct result of [the beneficiary's] contributions, [the petitioner] will have an improved reservoir model of Prudhoe with a better prediction of the volumes of remaining hydrocarbons and where they are located. Such predictions are critical for the development of depletion plans to increase recovery from this prolific and underdeveloped horizon at Prudhoe. The estimated recovery from this work will add an additional 100-300 million barrels of oil to the ultimate recovery of Prudhoe Bay. On average, this will increase production between 15,000 and 20,000 barrels of oil per day. In a field where average production is currently 300,000 barrels of oil per day and declining annually, an increase of production [of] approximately 6% is a substantial contribution to the US domestic oil reserve. The additional production

will increase the economic viability of the Prudhoe field by approximately 10-15 years using standard reserves to production ratios.

The projections seem impressive, but the petitioner submitted no first-hand evidence to show that the beneficiary's work had actually increased yields at Prudhoe Bay or anywhere else. Furthermore, while [REDACTED] provided estimates about the magnitude of improvements that the beneficiary may put in place, but he provided no basis to compare those figures with what could be expected from other qualified petroleum engineers.

The director denied the petition on November 13, 2009, stating that the petitioner had failed to submit objective, documentary evidence to establish the beneficiary's impact on her field. The director noted that the petitioner submitted no evidence of citation of the beneficiary's work (but also acknowledged that citations are not the sole measure of impact). The director also noted that exceptional ability is not a presumptive basis for approving the national interest waiver.

On appeal, the petitioner contends that the director applied "requirements for the national interest waiver that exceed and contradict the guidance of the AAO in NYSDOT," for instance by requiring the petitioner to show that the beneficiary's "contributions . . . not only meet the baseline requirements for exceptional ability but . . . must go beyond this baseline requirement." The director did not require the petitioner to meet the specific regulatory standards of exceptional ability, as spelled out in the regulation at 8 C.F.R. § 204.5(k)(3)(ii). The director, rather, correctly pointed out that, under section 203(b)(2)(A) of the Act, a petitioner seeking to classify an alien as an alien of exceptional ability must show that the alien "will substantially benefit . . . the United States." The same statute imposes the job offer requirement on that alien. Therefore, the substantial benefit that arises from exceptional ability obviously does not exempt a given alien from the job offer requirement. The national interest waiver is an additional benefit, over and above the underlying immigrant classification. It is therefore a matter of simple logic that an alien seeking a national interest waiver must offer a greater benefit than the substantial benefit intrinsic to exceptional ability. This is not the same as requiring the alien to meet the specific evidentiary requirements of exceptional ability.

The petitioner argues that the director improperly required "independent, verifiable documentary evidence of the beneficiary's past experience normally expected of researchers when the record indicates that the Beneficiary is an engineer." It was the petitioner who first invited the comparison with a researcher by referring to the beneficiary as a published and cited author of scholarly articles. More importantly, while the specific nature of the evidence will vary from field to field, the notion of "independent, verifiable evidence" is not exclusive to researchers, and it is entirely appropriate to expect the petitioner to submit independent, verifiable evidence to support the petitioner's specific claims.

The petitioner submits an excerpt from the *Occupational Outlook Handbook* from the U.S. Department of Labor's Bureau of Labor Statistics. One passage reads, in part:

Because only a small proportion of oil and gas in a reservoir flows out under natural forces, petroleum engineers develop and use enhanced recovery methods. . . .

Because even the best techniques in use today recover only a portion of the oil and gas in a reservoir, petroleum engineers research and develop technology and methods to increase recovery and lower the cost of drilling and production operations.

The above passage is enlightening because it shows that increasing the productivity of an oil well is not a rare achievement for a petroleum engineer. It is, rather, a basic component of a petroleum engineer's job description and an expected outcome of the petroleum engineer's work. For this reason, it cannot suffice for the petitioner (or witnesses) to state that the beneficiary's efforts increase the efficiency of recovery at a particular oil field. That is, literally, her job. The petitioner must, rather, show that the beneficiary stands out among other petroleum engineers who, like the petitioner, have the responsibility of improving production. Indeed, on appeal, the petitioner states "the benefit of her work should be measured by its tangible impact upon the oil and gas industry such as whether the work has been applied in the industry and the results of such application."

The petitioner stated that the director failed to explain "the specific reasons why expert letters and other evidence in the record are insufficient" to meet evidentiary requirements. The "other evidence" submitted prior to the director's decision primarily concerns the beneficiary's academic and professional credentials, as well as background materials about the petitioner, the petroleum industry, and energy policy. The objective evidence of record did not support, or even address, witnesses' claims regarding the beneficiary's influence and impact. The most specific assertions regarding the beneficiary's work amount to speculation about future outcomes, rather than already-documented results.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The AAO stresses that the above case law does not require USCIS to impeach the credibility of witnesses. Other factors, including lack of specificity or corroboration, can also diminish the weight of witness letters. For all the vague claims about the beneficiary's influence throughout the industry, the petitioner did not establish widespread use of the beneficiary's techniques. References to maintaining the petitioner's competitive advantage, along with a lack of evidence of any new publications after 2001 (apart from a historical review that looks back rather than forward), suggest that the beneficiary's work for the petitioner is proprietary, and not licensed or otherwise shared in a manner that would permit the beneficiary's work to influence the industry rather than her employer alone. The petitioner has not shown that anyone other than the petitioner is using the beneficiary's methods, or even that the petitioner is using the beneficiary's methods anywhere other than specific fields at Prudhoe Bay.

The petitioner contends: "The objective evidence of the Beneficiary's 'past history of demonstrable achievement' is documented through her published papers and conference presentations." The petitioner acknowledges that the beneficiary's "number of publication[s] and citation record can be considered minimal," but does not explain how the beneficiary's published work self-evidently shows that she qualifies for the waiver. The petitioner suggests that the witness letters demonstrate the impact of the beneficiary's published work, but the witnesses for the most part discuss the beneficiary's recent work for the petitioning entity in the United States, several years after the beneficiary wrote her published and presented work in China and the United Kingdom.

The petitioner submits screen-capture printouts from <http://www.scholar.google.com>, showing a handful of Chinese-language citations of some of the beneficiary's Chinese-language writings from the 1990s. The AAO repeats, here, that the petitioner claimed citations in the initial filing, but did not submit them at that time. The director then specifically requested evidence of the claimed citations. The petitioner could have submitted citation evidence at that time, but instead chose to downplay the importance of citations and submit other materials that the director had not requested. In doing so, the petitioner forfeited the opportunity to document the claimed citations.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The petitioner's belated submission of requested citation materials on appeal cannot show USCIS error in the denial notice, because the director correctly found that the record, at the time of the decision, lacked those materials.

The AAO acknowledges the petitioner's submission of apparently independent witness letters attesting to the beneficiary's impact and influence in her field. These claims, however, lack corroborating evidence which ought to be readily available. The claims also lack detail, except when they concern not the industry as a whole but rather efforts at specific sites at one complex of oil fields. The value of a petroleum engineer in prolonging the useful life and increasing the

productivity of oil fields is not in doubt. The petitioner, however, has not shown that it is in the national interest to ensure that this particular beneficiary be the petroleum engineer at the chosen Prudhoe Bay sites. It is possible that the beneficiary's methods will significantly improve production, but the record contains no data showing that this has been the case so far. The petitioner has not provided an objective comparison between the beneficiary and others in her field that would justify a waiver for the beneficiary in particular, rather than simply establish the overall importance of such engineers.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.